

Docket No. FRA-2001-8728, Notice No. 1

Sent via Fax

January 9, 2002

Allan Rutter
Administrator
Federal Railroad Administration
1120 Vermont Avenue N.W.
Washington D.C. 20590

Re: Interim Final Rule, 49 CFR Part 241

Dear Sir:

This letter by Canadian Pacific Railway Company (CPR) is a formal request to the FRA for a delay in the January 10, 2002 effective date of the Interim Final Rule, 49 CFR Part 241, which specifies the locational requirements for dispatching U.S. rail operations.

Sections II. and X. of the preamble identify an immediate desire by CPR to relocate to Canada those dispatchers who control rail operations on our Delaware & Hudson (D&H) subsidiary as being the reason to issue this as an Interim Rule without the benefit of prior consultations. There is nothing further from the truth. It was over 2 years ago that CPR contemplated such a move. Subsequent to adverse actions taken by the Surface Transportation Board in 1999, CPR withdrew those plans and moved the D&H dispatchers to our Operations Control Center in Minneapolis, MN. There is no further need or desire to relocate them again.

CPR has no immediate or pending plans to change any of our train dispatching functions nor expand the use of Canadian dispatchers into the U.S. CPR has identified 7 international gateways where Canadian dispatchers currently control train movements for very short distances into the U.S. (and have done so since prior to Dec. 1999). None of these locations were recognized within the preamble discussion on the Rule, even though there was acknowledgment of such movements controlled by other carriers. This understandably makes us nervous and uncertain as what to expect. While we believe that the grandfather clause in the Interim Rule Part 241.9(c) would protect CPR's existing extra-territorial dispatching, it does introduce a certain risk to the free movement of trade between the U.S. and Canada if our interpretations are incorrect. We would be concerned, for example, if the grandfathering provisions were not interpreted so as to extend to very small adjustments to mileage or routes in respect of operations currently dispatched from Canada.

The FRA has asked for comments on many issues surrounding this rulemaking, and CPR has many questions for the FRA, principally dealing with the limitations imposed by Part 241.9(d) and with the recent but inseparable NPRM on drug and alcohol testing. CPR fully intends to file written comments to both of these rulemakings, as requested by the February 12th date. However, it is not possible to address all of those questions and concerns in this letter with a pending January 10 effective date. However, the potential risks of interrupted train service, that may occur through a mis-interpretation of the Interim Rule, are too great to ignore. This is particularly critical during a period of difficult international trade imposed by the tragedies of September 11.

We sincerely urge the FRA to delay the effective date of this Interim Rule until written comments can be submitted, RSAC consultations can take place, and everyone is clear on the intent and operation of the Rule. In return, CPR commits to taking no action in the interim period that will expand the use of foreign dispatching into the U.S.

Your immediate attention is requested.

Sincerely,

SIGNED

Faye Ackermans
General Manager
Safety & regulatory Affairs

cc: George Gavalla, Associate Administrator of Safety
Dennis Yachechak, FRA Railroad Safety Specialist
John Winkle, FRA Trial Attorney
Charles Dettmann, AAR Executive Vice President
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